

HONORABLE RICARDO S. MARTINEZ

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

MICROSOFT CORPORATION,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

NO. 2:15-cv-00369 RSM

FOURTH CONSENT MOTION AND ORDER
REGARDING CASE SCHEDULE

NO. 2:15-cv-00850 RSM

The above-captioned actions are for declaratory and injunctive relief under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. The parties jointly request that these actions remain open and that the

FOURTH CONSENT MOTION TO EXTEND TIME AND ORDER
REGARDING CASE SCHEDULE
(Case Nos. 2:15-cv-00369, 2:15-cv-00850)

U.S. Department of Justice, Tax Division
Ben Franklin Station, P.O. Box 227
Washington, D.C. 20044
202-616-8994 (Phone)
202-524-6866 (Fax)

1 Court approve the parties' agreed upon, modified schedule set forth in paragraph 3, below. In
 2 support of this request, the parties state the following:

3 1. On September 17, 2021, the Court issued a modified case management order
 4 adopting the parties' proposed revised schedule and case management order. Under that
 5 schedule, the IRS was required to file a motion for summary judgment by December 3, 2021.

6 2. Counsel for the IRS and Microsoft have had regular discussions over the past
 7 months to identify and attempt to narrow the issues for which summary judgment briefing would
 8 be necessary. By letters dated September 22, 2021 and November 10, 2021, Microsoft
 9 acknowledged that the IRS had addressed some of its concerns, and summarized a variety of
 10 outstanding issues it had raised previously regarding the IRS's productions, draft declarations,
 11 and draft *Vaughn* indices, including certain exemption claims. The IRS responded to certain of
 12 the issues raised by Microsoft by letter dated November 23, 2021. The IRS is in the process of
 13 responding to Microsoft's remaining concerns, and the parties are still engaging in good faith
 14 negotiations to narrow the issues that may be addressed in summary judgment proceedings.¹

15 3. The IRS accordingly requests, and Microsoft consents, to extend the remaining
 16 deadline for the filing of the IRS's motion for summary judgment. The IRS thus requests that
 17 the Court adopt a case schedule extending the deadline for filing a motion for summary judgment
 18 up to and including January 28, 2022 for both of the above-captioned cases.

19 4. Recognizing that the parties continue to engage in good faith negotiations, the
 20 parties agree that evidence of the IRS's efforts to address Microsoft's concerns, including any
 21 revisions to previously exchanged declarations or exemption claims, is not admissible to prove
 22 that the IRS's search was unreasonable or that the IRS's exemption claims were improper.

23
 24 ¹ As set forth in more detail in the motion in the associated FOIA case also before this Court, 2:15-cv-
 25 01605, the IRS is in the process of supplementing its draft revised *Vaughn* index in that case with
 approximately 3,400 additional entries. The IRS, with Microsoft's consent, has requested an identical
 extension of time for filing for summary judgment in that case.

1 5. The parties jointly request that these actions remain open and that the Court enter
2 an order adopting the case schedule proposed in paragraph 3.

3 Respectfully submitted this 2nd day of December, 2021.

4
5 **BAKER & McKENZIE LLP**

6 By: s/ Daniel A. Rosen
7 Daniel A. Rosen, NYBA #2790442
8 *Pro Hac Vice*
9 452 Fifth Avenue
10 New York, NY 10018
11 Tel: (212) 626-4272
12 Fax: (212) 310-1600
13 Email: daniel.rosen@bakermckenzie.com

14
15 *Attorney for Plaintiff Microsoft Corporation*

16 **U.S. DEPARTMENT OF JUSTICE**

17 By: s/ Stephen S. Ho
18 Stephen S. Ho
19 Trial Attorney, Tax Division
20 U.S. Department of Justice
21 Post Office Box 227
22 Washington, DC 20044
23 Tel: (202) 616-8994
24 Fax: (202) 514-6866
25 Email: stephen.s.ho@usdoj.gov

Attorney for Defendant Internal Revenue Service

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing JOINT MOTION via the Court's electronic case filing system on December 2, 2021.

/s Stephen S. Ho

STEPHEN S. HO

ORDER

It is SO ORDERED this 6th day of December, 2021.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

BAKER & McKENZIE LLP

By: s/ Daniel A. Rosen
Daniel A. Rosen, NYBA #2790442
Pro Hac Vice
452 Fifth Avenue
New York, NY 10018
Tel: (212) 626-4272
Fax: (212) 310-1600
Email: daniel.rosen@bakermckenzie.com

Attorney for Plaintiff Microsoft Corporation

U.S. DEPARTMENT OF JUSTICE

By: s/ Stephen S. Ho
Stephen S. Ho
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 227
Washington, DC 20044
Tel: (202) 616-8994
Fax: (202) 514-6866
Email: stephen.s.ho@usdoj.gov

Attorney for Defendant Internal Revenue Service

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